

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2012-139-C - ORDER NO. 2012-607

AUGUST 17, 2012

IN RE:	Application of Impact Telecom, Incorporated)	ORDER GRANTING
	for a Certificate of Public Convenience and)	CERTIFICATE
	Necessity to Provide Resold Interexchange)	
	Telecommunications Services in the State of)	
	South Carolina on a Wholesale Basis Only)	

This matter comes before the Public Service Commission of South Carolina ("Commission") by way of the Application of Impact Telecom, Inc. ("Applicant" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina on a wholesale basis only. The Company's Application was filed pursuant to S.C. Code Ann. § 58-9-280, Section 253 of the Telecommunications Act of 1996, and the rules and regulations of the Commission.

The Commission's Clerk's Office instructed the Company to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of the Company and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A hearing was convened on July 9, 2012, at 10:00 a.m. in the offices of the Commission in Columbia, South Carolina, before Josh Minges, Hearing Examiner. The Company was represented by Scott Elliott, Esquire. The Office of Regulatory Staff (“ORS”) was represented by C. Lessie Hammonds, Esquire. At the outset of the hearing, the Applicant and the ORS entered a Settlement Agreement into the record, attached hereto as Order Exhibit 1.

Robert Beaty, President of the Company, testified via video conference in support of the Company’s Application. The record reveals that the Company is a corporation organized under the laws of the State of Nevada, which is registered to transact business in South Carolina. According to Mr. Beaty, the Company seeks authority as a reseller of interexchange services on a wholesale basis. Mr. Beaty explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. The Company intends to offer resold interexchange service throughout the state. The Company plans to offer voice services and data point-to-point private line services. Customers will not be assigned telephone numbers as customers are exclusively other telecommunications carriers and the proposed services are on a wholesale basis only. Mr. Beaty also discussed the Company’s technical, financial, and managerial resources to provide the services for which it seeks authority.

With regard to technical, financial, and managerial capabilities, the Company’s Application and Mr. Beaty’s testimony both evidence that the Company’s management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Applicant’s witness also testified that the Company

will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Beaty offered that approval of the Company's Application would serve the public interest.

The Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in another state. The Company also requests a waiver of any Commission policy that would require it to maintain its books under the Uniform System of Accounts ("USOA") method. The Company uses Generally Accepted Accounting Principles ("GAAP") to maintain its books. Therefore, according to the Company, it would create a hardship to maintain a separate accounting system.

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Applicant is organized under the laws of the State of Nevada as a corporation and is authorized to do business in South Carolina by the Secretary of State.
2. Applicant desires to operate as a provider of resold interexchange services in South Carolina on a wholesale basis only.
3. We find that Applicant possesses the managerial, technical, and financial experience and capability to operate as a provider of resold interexchange services in South Carolina.
4. We find that the issuance of a Certificate of Public Convenience and Necessity to the Applicant to operate as a reseller of interexchange services in South

Carolina would be in the best interest of the citizens of South Carolina by providing more competitive services.

5. The Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610, and for waiver of any Commission policy that would require it to maintain its books under USOA. The Commission finds the Company's requested waivers reasonable and understands the potential difficulty presented to the Company should the waivers not be granted.

6. The Settlement Agreement between the Company and the ORS is fair and reasonable and in the public interest.

CONCLUSIONS OF LAW

1. The Commission concludes that Applicant possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by the Applicant, and as set forth in its Application and the testimony, is in the best interests of the citizens of the State of South Carolina.

3. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to the Applicant to provide resold intrastate interexchange telecommunications services.

4. We conclude that Applicant's request for waiver of 26 S.C. Code Ann. Regs. 103-610 and use of the USOA should be granted. The waivers are not contrary to the public interest.

5. Because the Settlement Agreement between the Applicant and the ORS is fair, reasonable, and in the public interest, it is hereby approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to the Company to provide intrastate interexchange services by the resale of services authorized for resale by tariffs of carriers approved by the Commission within the State of South Carolina on a wholesale basis only.

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, the Company shall file its revised tariff within thirty (30) days of receipt of this Order using the Commission's e-filing system. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's rules and regulations, as well as the provisions of the Impact Telecom, Inc.-ORS Settlement Agreement.

4. The Company shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If the Applicant changes underlying carriers, it shall notify the Commission and ORS in writing.

5. In addition to the financial filings required supra, the Company shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, the Company shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.regulatorystaff.sc.gov, and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund ("USF") Contribution Worksheet, which may be found on the ORS's website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The South Carolina Universal Service Fund Contribution Worksheet is due to be filed annually no later than **July 1st** with the ORS.

6. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. The Company shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS website at www.regulatorystaff.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

7. The Company is directed to comply with all rules and regulations of the Commission, unless a regulation is specifically waived by the Commission.

8. At the hearing, the Applicant requested a waiver of 26 S.C. Code Ann. Regs. 103-610 and use of the USOA. The Commission finds Applicant’s requested waiver reasonable and understands the potential difficulty presented to Applicant should the waiver not be granted. The Commission therefore grants the requested waiver. However, Applicant shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and Applicant shall promptly notify the Commission and ORS if the location of its books and records changes.

9. The Settlement Agreement between Impact Telecom, Inc. and ORS is hereby approved.

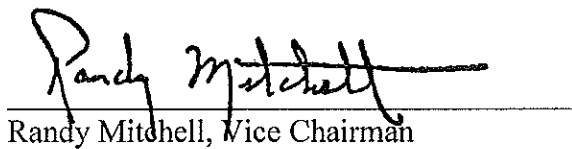
10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



David A. Wright, Chairman

ATTEST:



Randy Mitchell, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-139-C

IN RE:)	
Application of Impact Telecom, Incorporated for)	SETTLEMENT
a Certificate of Public Convenience and)	AGREEMENT
Necessity to Provide Resold Interexchange)	
Telecommunications Services in the State of)	
South Carolina on a Wholesale Basis Only)	

This Settlement Agreement ("Settlement Agreement") is made by and among the South Carolina Office of Regulatory Staff ("ORS") and Impact Telecom Inc. ("Impact" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party") on this 29th day of June.

WHEREAS, on March 30, 2012, Impact filed its Application requesting (i) that a Certificate of Public Convenience and Necessity be granted authorizing the Company to operate as a reseller of interexchange telecommunications services within the State of South Carolina on a wholesale basis only; (ii) that its interexchange service offerings be regulated in accordance with procedures established for wholesale; (iii) a waiver of Regulation 103-610 regarding location of records; and (iv) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts ("USOA").

WHEREAS, on April 4, 2012, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS, on April 5, 2012, the Commission issued a Notice of Filing and Hearing and established a return date of May 7, 2012, for the filing of letters of protest or petitions to intervene and established a hearing date of July 9, 2012, for the Application to be heard before a hearing examiner;

WHEREAS, on April 17, 2012, the Commission issued Order No. 2012-264 by which the Commission appointed Josh M. Minges, Esquire as the Hearing Examiner in this matter;

WHEREAS, on June 7, 2012, the Hearing Examiner issued a directive with amended prefiling dates;

WHEREAS, on June 15, 2012, the Company filed direct testimony of Robert Beaty;

WHEREAS, the purpose of this proceeding is to review the Application filed by the Company and its requests: (i) that a Certificate of Public Convenience and Necessity be granted authorizing the Company to operate as a reseller of interexchange telecommunications services within the State of South Carolina on a wholesale basis only; (ii) that its interexchange service offerings be regulated in accordance with procedures established for wholesale; (iii) a waiver of Regulation 103-610 regarding location of records; and (iv) a waiver of any requirement to maintain financial records in conformance with the USOA;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical and managerial expertise of the Company to provide the services requested in the Application;

WHEREAS, ORS has reviewed Impact's financial statements filed as Exhibit C of the Application and the confidentiality of which the Company sought to establish by filing a Motion for Protective Treatment;

WHEREAS, ORS calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs filed as Exhibit E of the Application;

WHEREAS, ORS has reviewed the pre-filed testimony of Robert Beaty;

WHEREAS, as a result of its investigations, ORS has determined: (a) the Company requests authority to operate as a wholesale reseller of interexchange telecommunication services within the State of South Carolina; (b) the Company's officers appear to possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, the Company appears to have access to sufficient financial resources necessary to provide the services proposed in its Application; (d) the Company's proposed tariffs set forth in Exhibit E of its Application with the revisions recommended by ORS, and accepted by the Company, comply with Commission statutes and regulations; (e) the services provided by the Company will meet the service standards required by the Commission; (f) the provision of services by the Company will not adversely impact the availability of affordable telecommunications services; (g) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree that Impact's Application and the exhibits attached to the Application are incorporated into this Settlement Agreement and made a part hereof;

2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of the Company's witness Robert Beaty;

3) The Company submitted financial data, under seal, which was provided as Exhibit C of its Application, and which financial data is incorporated by reference;

4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to operate as a wholesale reseller of interexchange telecommunications services within the State of South Carolina;

5) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2011) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff to be kept within the State. No books, accounts, papers or records required by the Office of Regulatory Staff to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in Greenwood Village, Colorado, and the Company agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2011) or § 58-9-1070 (Supp. 2011). ORS expressly

reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties in compliance with any state or federal regulation;

6) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the USOA. The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2011) provides that ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission's jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund ("USF"), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs including but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

7) The Company agrees to resell the services only of those interexchange providers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, if Impact changes its underlying carriers;

8) The Company agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, dual party relay service fund reporting, interim

LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as Impact. The Parties agree that such reports shall be filed pursuant to ORS's instructions and that monies shall be remitted in accordance with the directions of the ORS and the Commission's requirements;

9) The Company agrees to maintain its books and records associated with its South Carolina operations in a manner that would permit ORS to examine any of Impact's reports filed with the Commission and provided to ORS;

10) The Company agrees to file with the Commission and ORS a completed authorized utility representative form within thirty (30) days of the Commission's order;

11) In the event that the Company offers prepaid calling card or prepaid long distance services in the future, Impact agrees that it shall obtain Commission approval and post a surety bond in the amount of \$5,000 as required by the Commission;

12) The Company agrees to comply with South Carolina Code Ann. § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, Impact agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

15) The Company agrees to comply with all orders, directives, guidelines, rules and regulations of the Commission unless the Commission has expressly waived such requirement, rule or regulation;

16) The Company agrees to file a final revised tariff with both the ORS and the Commission within thirty (30) days of the Commission Order granting certification, and the revised tariff shall reflect and be in accordance with ORS's recommendations. Further, the Company agrees to file and maintain its tariff with the Commission electronic tariff filing system;

17) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B) (Supp. 2011). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

18) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein;

19) The Parties represent that the terms of this Settlement Agreement are based upon

full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts with, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party;

20) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation;

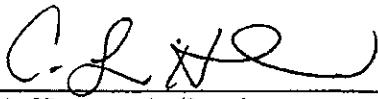
21) This Settlement Agreement shall be interpreted according to South Carolina law; and

22) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will

not be binding on any Party.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

Representing the South Carolina Office of Regulatory Staff



C. Lessie Hammonds, Esquire

Courtney D. Edwards, Esquire

South Carolina Office of Regulatory Staff

1401 Main Street, Suite 900

Columbia, South Carolina 29201

Tel.: (803) 737-0803

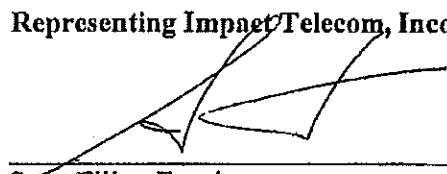
(803) 737-8440

Fax: (803) 737-0895

Email: lhammon@regstaff.sc.gov

cedwards@regstaff.sc.gov

Representing Impact Telecom, Incorporated



Scott Elliot, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, South Carolina 29201
Tel.: (803) 771-0555
Fax: (803) 771-8010
Email: selliot@elliottlaw.us